difficult to impress them with the enormous weight which attaches to the document itself as evidence of the animus with which it was made. This weight it becomes the court to appreciate, and to guard with jealousy the sanction of a solemn act." In another case cited, *Nichols* v. *Nichols* (1814), 2 Phillim. 180, CHAPLIN'S CASES, 253, ABBOTT'S CASES, 270, the will was in these words: "I leave my property between my children; I hope they will be virtuous and independent—that they will worship God, and not black coats. July 30, 1803. Thomas Nichols. Witness, Thomas King." The witnesses swore that the will was made in the library of a friend after a private banquet, and that it was made to illustrate the ridiculous tautology employed by lawyers in drawing up legal papers, and was never intended as a will at all. On this proof probate was denied.

In re Goods of Hunt (1875), L. R. 3 Prob. & Div. 250, MECHEM'S CASES ON WILLS, 30, ABBOTT'S CASES, 264, is also cited, in which it was held, as it has been in several other cases, that a will cannot be admitted to probate when it appears that it was executed by mistake, when the testator intended to sign another paper. In this case sisters made mutual wills, and each signed the one prepared for the other.

THE LEGAL STATUS OF A PARTICIPANT IN A GUESSING CONTEST.—The determination of what are, and what are not lotteries, has of recent years been the subject of numerous judicial decisions. The status of a participant in such a scheme has not been so frequently decided. In the recent case of *Stevens* v. *The Cincinnati Times-Star, The Enquirer and the Tribune* (1905), — Ohio —, 73 N. E. Rep. 1058, both questions came up for consideration. The newspapers concerned offered prizes to persons who should come nearest to guessing the number of votes to be cast for state officers in Ohio and Indiana in the election in the fall of 1902. Each participant was required to pay fifty cents for the privilege of making a guess.

Before the election occurred, the plaintiff, one of the guessers, conceiving the contest to be illegal, brought suit to recover back his fifty cents and also alleged that he was one of a large number of persons similarly situated, each of whom had an interest in the fund accumulated from these fifty-cent payments, and that unless restrained the defendants would distribute the fund, leaving himself and his four hundred thousand fellow victims remediless, and asked that a receiver be appointed to take possession of the fund, ascertain the names of the parties lawfully entitled thereto and to distribute it among them. He invoked the statute, common to most codes that "when the question is one of common or general interest to many persons or when the parties are very numerous and it is impracticable to bring them all before the court one or more may sue for the benefit of all." The court held the scheme to be a lottery but that plaintiff could not bring suit for the other contestants and that the lower court, not having jurisdiction of his individual claim, properly dismissed the case.

In the recent case of *Ellison* v. *Lavin*, 179 N. Y. 164, a guessing contest as to the number of cigars subject to the internal revenue tax during a named month was held to be a lottery, while in *United States* v. *Rosenblum*, 121 Fed.

Rep. 180, upon identical facts, the opposite conclusion was reached. It is said in *Quatsoe* v. *Eggleston*, 42 Ore. 315, "if the power of reason or the will is exercised it is not a lottery." In support of this view it has been held that giving prizes for naming the winner in a horse race is not a lottery; *Shoddart* v. *Sager* [1895], 2 Q. B. 474; nor for making the nearest prediction as to number of births and deaths in London during a named week; *Hall* v. *Cox* [1899], 1 Q. B. 198, nor is giving prizes to the nearest guesser to the number of beans in a jar, *Reg.* v. *Dodds*, 4 Ont. 390—the contrary being held in *Hudleson* v. *State*, 94 Ind. 426. In the principal case the element of skill was regarded as immaterial. In this respect it is in harmony with the recent decision in *Public Clearing House* v. *Coyne*, 194 U. S. 497, where the court held a questionable scheme to be a lottery since it lacked the elements of legitimate business enterprise, the result being determined "from conditions over which the contestant had no control and with which he had no connection." This seems a reasonable doctrine as the manifest tendency of any "get rich quick scheme" should determine its character rather than its conformity to definitions.

The court conceded that the plaintiff had a right to recover back the fifty cents paid by him, each contestant having a several demand for that amount (*Jones* v. *Garcia Del Rio*, 1 T. & R. 297; *Barclay* v. *Pearson* [1893], 2 Ch. 154), but, in the absence of a showing to the contrary, presumed that the others did not want their money back and therefore should receive no aid from a court of equity; had they all been of the same class their consent would have been presumed. *Flint* v. *Spurr*, 17 B. Mon. (Ky.) 499. In *Jones* v. *Garcia Del Rio*, supra, Lord ELDON held that one person might thus file a bill on behalf of himself and others where the others have a choice between such relief and nothing. If, however, they desire to abide by their contract the rule would be inapplicable. In the principal case the contract being void, thus giving the parties no rights under it, the plaintiff claimed to be within the above rule.

In should also be noted that the statute giving the right to recover money back *after* the contract is executed seems to be designed for the benefit of the contestants. *Duval* v. *Wellman*, 124 N. Y. 156; *Jaques* v. *Golightly*, 2 Wm. Bl. 1073; *Equitable Loan & Surety Co.* v. *Waring*, 117 Ga. 599. It thus nullifies any consent to have it paid to the winner under the agreement. *Lewis* v. *Miner*, 3 Denio 103. Nor would it be presumed that it was intended as a gratuity. *Ruckman* v. *Pitcher*, 1 N. Y. 319.

Lotteries were not illegal at the common law but are merely mala prohibita. *Mississippi* v. *Stone*, 101 U. S. 814. In Ohio the statutory penalties are imposed only on the party conducting the lottery. Annot. Stat. 6929-31. The doctrine that the parties are in pari delicto consequently is inapplicable. *Mount* v. *White*, 7 Johns. (N. Y.) 434; CLARK CONTRACTS, § 500. The practical difficulty of distributing the fund and the slight benefit that would accrue to the plaintiffs doubtless appealed to the court as it did in *Barclay* v. *Pearson* [1893], 2 Ch. 154, and in *Equitable Loan & Security Co.* v. *Waring*, 117 Ga. 599, 62 L. R. A. 93.